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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/807,819 | 03/24/2004 | Brian A. Brown | BR-0401 | 4338 |

36088 7590 02/23/2005

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| EXAMINER | |
|---|---|
| REESE, DAVID C | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3677 | |

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/807,819 | BROWN ET AL. | |
| | Examiner | Art Unit | |
| | David C. Reese | 3677 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *Amendment 1/25/05*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-27 and 32-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27 and 32-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

The following office action is in response to amendment filed 1/25/2005.

### *Status of Claims*

**[1]** Claims 1-27 and 32-35 are pending.

### *Response to Arguments*

**[2]** Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

In view of the current amendments to above claims, Remmers, US-6,494,653, patent of which was submitted in the notice of reference cited by examiner in the first office action, still reads upon the claimed subject matter. Please read below.

### *Claim Rejections - 35 USC § 102*

**[3]** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**[4]** Claims 1-27 and 32-35 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Remmers, US- 6,494,653 because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Remmers is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

Remmers teaches of a wall anchor.

As for Claim 1, Remmers teaches of a method for attaching a drivable anchor to a wallboard, the anchor useful in association with a pin, the method comprising:

driving the anchor into the wallboard without a need for pre-drilling the wallboard (part 4, line 45, "Screw tip 60 has a self-drilling point 58 that cuts its own hole in the wall or support member.... Wall anchor can also be configured to be driven into a wall..."), the anchor having a pivotable section (center of anchor in Fig. 7, and 32 and 30 in Fig. 5) and a wallboard support section (57 in Fig. 7), and wherein the pivotable section is supported by the wallboard support section while driving the anchor into the wallboard (24 in Fig. 6); and

inserting the pin into a channel of the wallboard support section of the anchor, (34 into channel 25 in Fig. 5) thereby causing (a) the pivotable section of the anchor to pivot (36 causing 32 and 30 to pivot from Figs. 5 to 6) and come into contact an interior surface of the wallboard (26a and 26b in Fig. 6).

Re: Claim 2, wherein a lever action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 3, wherein a rack and pinion action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 4, wherein the pivotable section that pivots to a predetermined position relative to the wallboard (Fig. 6).

As for Claim 5, wherein the pin that has a round screw head (35 in Fig. 6).

As for Claim 6, wherein the pin has a threaded body (it would be readily appreciated by one in the art of the ability to add threads to a drive pin to increase the surfaces area, spread force, and maintain a better grip between the pin and the drivable anchor). (Also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

As for Claim 7, wherein an external cross-sectional profile of the anchor that is elongated so as to provide a larger load-bearing surface for the wallboard, the cross-sectional profile being perpendicular to a driving axis of the anchor (examiner understands the purpose of this limitation, but however, the claim language remains too

broad as the distance between 54 across to its respective other side and 52 across to its respective other side can be considered elongated, especially with respect to the front of the anchor as the distance of 58 across and 60 across is smaller, or less elongated than that of 54 across and then 52 across).

As for Claim 8, wherein an internal cross-sectional profile of the channel that is elongated so as to accommodate a range of pin sizes and types, the cross-sectional profile being perpendicular to a driving axis of the anchor (it would be readily appreciated by one in the art of the ability to manipulate the inner cross-sectional profile of the channel to increase or decrease the profile as to accommodate pins of different sizes, this is considered a design choice, or a chance is shape or size that is well known to those skilled in the art). (Also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

Note that those of ordinary skill in the art would appreciate that a modification such as a mere change in size of a component would be obvious. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237 (CCPA 1955)*. See also, MPEP § 2144.04 which states: *In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)* ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." *531 F.2d at 1053, 189 USPQ at 148.*). In *Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984)*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

As for Claim 9, wherein an anchor including at least one stabilizing fin (54 in Fig. 7).

As for Claim 10, Remmers teaches of a fastener useful with a wallboard (Fig. 7), comprising:

a drivable anchor (part 4, line 45, "Screw tip 60 has a self-drilling point 58 that cuts its own hole in the wall or support member.... Wall anchor can also be configured to be driven into a wall...") having at least one pivotable section (center of anchor in Fig. 7, and 32 and 30 in Fig. 5) and a wallboard support section (57 in Fig. 7), and wherein the pivotable section is configured to be supported by the wallboard support section when the anchor is driven into the wallboard (24 in Fig. 6), the anchor configured to be driven into the wallboard without a need for pre-drilling the wallboard (part 4, line 45, "Screw tip 60 has a self-drilling point 58 that cuts its own hole in the wall or support member.... Wall anchor can also be configured to be driven into a wall..."), and

a pin configured to be inserted into a channel of the wallboard support sections of the anchor (34 into channel 25 in Fig. 5) so that the insertion of the pin into the wallboard support section causes the pivotable section of the anchor to pivot (36 causing 32 and 30 to pivot from Figs. 5 to 6) and come into contact an interior surface of the wallboard (26a and 26b in Fig. 6).

Re: Claim 11, wherein a lever action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 12, wherein a rack and pinion action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 13, wherein the pivotable section that pivots to a predetermined position relative to the wallboard (Fig. 6).

As for Claim 14, wherein the pin that has a round screw head (35 in Fig. 6).

As for Claim 15, wherein the pin has a threaded body (it would be readily appreciated by one in the art of the ability to add threads to a drive pin to increase the surfaces area, spread force, and maintain a better grip between the pin and the drivable anchor). (Also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

As for Claim 16, wherein an external cross-sectional profile of the anchor that is elongated so as to provide a larger load-bearing surface for the wallboard, the cross-sectional profile being perpendicular to a driving axis of the anchor (examiner understands the purpose of this limitation, but however, the claim language remains too broad as the distance between 54 across to its respective other side and 52 across to its respective other side can be considered elongated, especially with respect to the front of the anchor as the distance of 58 across and 60 across is smaller, or less elongated than that of 54 across and then 52 across).

As for Claim 17, wherein an internal cross-sectional profile of the channel that is elongated so as to accommodate a range of pin sizes and types, the cross-sectional profile being perpendicular to a driving axis of the anchor (it would be readily appreciated by one in the art of the ability to manipulate the inner cross-sectional profile

of the channel to increase or decrease the profile as to accommodate pins of different sizes, this is considered a design choice, or a chance is shape or size that is well known to those skilled in the art). (Also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

Note that those of ordinary skill in the art would appreciate that a modification such as a mere change in size of a component would be obvious. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237 (CCPA 1955)*. See also, MPEP § 2144.04 which states: *In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)* ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." *531 F.2d at 1053, 189 USPQ at 148.*). In *Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984)*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

As for Claim 18, wherein an anchor including at least one stabilizing fin (54 in Fig. 7).

As for Claim 19, comprising:

at least one pivotable section (center of anchor in Fig. 7); and

a wallboard support section (54 in Fig. 7), and wherein the pivotable section is configured to be supported by the wallboard support section when the anchor is driven into the wallboard (Fig. 6), the pivotable section configured so that an insertion of the pin into a channel of the wallboard support section of the anchor causes the pivotable

section of the anchor to pivot and come into contact an interior surface of the wallboard (Fig. 6).

Re: Claim 20, wherein a lever action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 21, wherein a rack and pinion action between the pin and the pivotable section causes the pivotable section to pivot (Fig. 7).

As for Claim 22, wherein the pivotable section that pivots to a predetermined position relative to the wallboard (Fig. 6).

As for Claim 23, wherein the pin that has a round screw head (35 in Fig. 6).

As for Claim 24, wherein the pin has a threaded body (it would be readily appreciated by one in the art of the ability to add threads to a drive pin to increase the surfaces area, spread force, and maintain a better grip between the pin and the drivable anchor) (also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

As for Claim 25, wherein an external cross-sectional profile of the anchor that is elongated so as to provide a larger load-bearing surface for the wallboard, the cross-sectional profile being perpendicular to a driving axis of the anchor (examiner understands the purpose of this limitation, but however, the claim language remains too broad as the distance between 54 across to its respective other side and 52 across to its respective other side can be considered elongated, especially with respect to the

front of the anchor as the distance of 58 across and 60 across is smaller, or less elongated than that of 54 across and then 52 across).

As for Claim 26, wherein an internal cross-sectional profile of the channel that is elongated so as to accommodate a range of pin sizes and types, the cross-sectional profile being perpendicular to a driving axis of the anchor (it would be readily appreciated by one in the art of the ability to manipulate the inner cross-sectional profile of the channel to increase or decrease the profile as to accommodate pins of different sizes, this is considered a design choice, or a chance is shape or size that is well known to those skilled in the art) (also in part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...").

Note that those of ordinary skill in the art would appreciate that a modification such as a mere change in size of a component would be obvious. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237 (CCPA 1955)*. See also, MPEP § 2144.04 which states: *In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)* ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." *531 F.2d at 1053, 189 USPQ at 148.*). In *Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984)*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

As for Claim 27, wherein an anchor including at least one stabilizing fin (54 in Fig. 7).

As for Claim 32, the anchor comprising an anchor having at least one pivotable section (center of the anchor in Fig. 7), the pivotable section configured so that a geared rack and pinion action between the pin and the anchor causes the pivotable section to pivot (part 2, line 51 stating, "...having a bore 23 therethrough for receiving a securing member such as a bolt, pin, screw, nail or similar object. The bore can be of any acceptable shape to received a securing member.... the head can also be of any configuration, including having a hook or other member...") and come into contact an interior surface of the wallboard as the pin is inserted into a channel of the anchor (Fig. 6).

Re: Claim 33, wherein the wallboard support section has a recess for supporting the pivotable section (recess found in the center of the anchor in Fig. 7 and below 32 in Fig. 3).

Re: Claim 34, wherein the wallboard support section has a recess for supporting the pivotable section (recess found in the center of the anchor in Fig. 7 and below 32 in Fig. 3).

Re: Claim 35, wherein the wallboard support section has a recess for supporting the pivotable section (recess found in the center of the anchor in Fig. 7 and below 32 in Fig. 3).

***Conclusion***

**[5]** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**[6]** Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is 703-305-4805. The examiner can normally be reached on 7:30 am - 5:00 pm M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,
David Reese
Examiner
Art Unit 3677

ROBERT J. SANDY
PRIMARY EXAMINER